

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
FAMILY DELI OF BELLMORE, INC.	:	ORDER
	:	DTA NO. 810719
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1987	:	
through through May 31, 1990.	:	

The Division of Taxation, by its representative William F. Collins, Esq. (Robert J. Jarvis, Esq., of counsel), brought a motion dated November 24, 1992 pursuant to 20 NYCRR 3000.6(a)(3) requesting the Division of Tax Appeals to issue an order precluding petitioner from giving any evidence at the hearing in the above-captioned case of the items of which particulars demanded in a Demand for Bill of Particulars dated June 29, 1992 have not been provided. Based upon the affirmation dated November 24, 1992 of Robert J. Jarvis, Esq., in support of the motion, the affirmation in opposition to the motion dated January 27, 1993 of Michael T. Lamberti, Esq., and upon all the pleadings contained herein, the following order is rendered.

ORDER

Petitioner commenced the above-captioned proceeding by petition signed on March 31, 1992 by its former representative, Vincent J. Nofi, Esq.

The Division of Taxation ("Division") filed an answer dated June 29, 1992 in response to the petition along with a Demand for a Bill of Particulars also dated June 29, 1992.

On December 28, 1992, petitioner filed a "Consent to Change Attorney", which substituted Michael T. Lamberti, Esq., as attorney of record in this matter for its former representative, Vincent J. Nofi, Esq.

Subsequently, petitioner by its newly-retained counsel filed a Verified Bill of Particulars dated January 27, 1993 in response to the Division's demand. In his affirmation in opposition to

the motion to preclude, Mr. Lamberti contended that the motion was rendered moot by such filing.

By a letter dated February 5, 1993 of Administrative Law Judge Frank W. Barrie, the Division's representative was requested to "please advise if you agree with Mr. Lamberti's statement that the motion to preclude is therefore moot." No response was received from the Division's representative to this letter.

Consequently, the motion for a preclusion order is denied as moot.

DATED: Troy, New York
March 11, 1993

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE